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**Department of Health Services
Guidance to Public Water Systems
on MBE/WBE Requirements
for SRF Loans
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Introduction: California's Drinking Water State Revolving Fund (SRF) was established to make low cost financing available to public water systems to enable them to meet drinking water standards for safety and health protection. The Department of Health Services (DHS), with support from the Department of Water Resources (DWR), receives SRF funds from the U.S. Environmental Protection Agency (EPA), adds State matching funds, then provides California water systems low cost financing opportunities, related technical assistance, and funds source water protection activities.

Since the majority of the funds available through the SRF program are federal assistance monies, SRF loan recipients must meet certain federal requirements. Among these is the requirement to provide opportunities to small, disadvantaged, and women owned business enterprises (commonly known as minority and women owned business requirements or MBE/WBE requirements). The objective of the MBE/WBE requirement is to provide meaningful opportunities for these businesses to participate in contracts and subcontracts for SRF funded projects.

The principal mechanism through which the SRF loan recipient will fulfill this requirement is by taking six steps related to providing project information to potential responsible MBE/WBEs, documenting their efforts, and providing summary reports on this activity to DHS.

Why are there MBE/WBE requirements for SRF loans? The California Safe Drinking Water State Revolving Fund Law of 1997 (Health and Safety Code Section 116760 et seq) established a loan program to provide for upgrading public water systems to ensure that all domestic water supplies meet safe drinking water standards. This law enables California to receive and make available to public water systems funds from the federal Safe Drinking Water State Revolving Fund. This fund was authorized in the federal Safe Drinking Water Act (42 U.S.C. Section 300j et seq). The State statute requires the DHS to implement this program in a manner consistent with the federal act.

There are federal requirements to provide small, disadvantaged, minority, and women owned businesses with the opportunity to compete for contracts, which are federally funded. California's drinking water SRF is funded primarily through an annual grant from the EPA for

this purpose. DHS manages the California drinking water SRF pursuant to a formal Operating Agreement with EPA, supplemented by an annual Intended Use Plan. Through State law, formal agreements with EPA, and federal and state guidance and regulations, DHS includes MBE/WBE provisions among the requirements with which SDWSRF loan recipients must comply.

Who is subject to MBE/WBE requirements? MBE/WBE good faith effort and reporting requirements apply to nearly all SRF funded projects. However, projects submitted by water systems that serve fewer than 1,000 service connections receiving SDWSRF funding of less than \$500,000 are generally exempt from MBE/WBE requirements to the extent that their project expenses can be met through loan of State funds committed to the SRF account.

What is required? The SRF recipient loan contract will include provisions related to compliance with MBE/WBE requirements. The loan agreement will include MBE and WBE percentage participation goals. However, performance of good faith effort by the loan recipient and its prime contractor is the mechanism of measuring compliance with the MBE/WBE program requirement. Thus, loan recipients and prime contractors who document their meaningful actions to comply with good faith effort requirements will have met the requirement. In such cases, the loan recipient will not be penalized if actual participation of MBE and WBE is below the goals, nor is the recipient relieved of continuing to make good faith efforts once the actual participation reaches the goal.

The SRF loan recipient complies with the MBE/WBE “good faith effort” requirement by following these basic affirmative steps:

- (1) Place qualified small and minority businesses and women’s business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority business and women’s business enterprises;
- (4) Establish delivery schedules when the requirements of the work permit, which will encourage participation by small and minority-owned businesses and women-owned business enterprises;
- (5) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency Department of Commerce; and
- (6) Require the prime contractor, if subcontracts are to be let, to take the affirmative steps in paragraphs (1) through (5).

Because of the nature of water system projects, implementation of good faith effort MBE/WBE requirements by the SRF loan recipient will typically involve inclusion of these requirements in the bid solicitation (negotiations with an offeror) and in related project specifications. This approach is generally used to ensure that potential respondents to the solicitation recognize

and perform the necessary steps prior to the bid submission deadline [or that contract negotiation with an offeror has included MBE/WBE requirements]. This mechanism provides opportunities for small, minority, and women owned business enterprises to be aware of, and compete to participate as subcontractors for prime contractor bidders/offerors.

When is action required by the water system? A public water system should include MBE/WBE participation goals and good faith effort and reporting requirements in the bid solicitation and related specifications [contract negotiation with an offeror] for projects funded by SDWSRF loans. Bid [offer] conformance with good faith effort requirements will be part of the water system's review and selection of the prime contractor. After the prime contract is made, brief quarterly summary forms documenting MBE/WBE services delivered during the report period will be submitted by the prime contractor to the water system and the Department.

How does my water system comply? The public water system should include MBE/WBE requirements in its bid solicitation [contract negotiation]. This allows potential prime contract bidders [offeror] to document their good faith effort to encourage responsible MBE/WBE firms to compete for subcontracted activities.

DHS recommends that the public water system's bid solicitation make the MBE/WBE good faith effort a requirement for the bid to be accepted as responsive. This will avoid potential situations in which the apparent low bidder among the responsible, responsive bidders is unable to document conformance with MBE/WBE requirements. In such case, ultimately the apparent low bidder must be rejected as not responsible and cannot serve as the prime contractor because it fails to meet this requirement of the bid solicitation. Remember that many potential prime contract bidders have competed for work on wastewater projects subject to similar MBE/WBE requirements and are familiar with this process. Water systems that do not award the prime contract through a competitive bidding process must go through a formal review of the selected contractor's documentation of compliance with the required six steps good faith effort. In the case of a non-competitive award, the clear intent of the selected contractor to facilitate MBE and WBE participation shall be demonstrated through the level of participation and the contractor's documentation of their efforts.

The water system will receive good faith effort documentation among the submissions required from bidders [offeror] for the prime contract. Upon award of the contract, the water system will include periodic reporting on utilization of MBE/WBE subcontractors in requirements of the prime contractor. The water system will monitor the conformance of those reports to the initial bid documentation [contract with an offeror], and provide quarterly reporting to the Department.

If modification/substitution of the planned utilization of MBE/WBE firms is necessary, consultation with the Department will be necessary. The water system and its prime contractor shall maintain files that can be reviewed by the Department during project inspection to verify MBE/WBE subcontractor services.

For further information: Questions not addressed by this introductory document, or requests for more detailed information, should be directed to:

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